RONALD C. AGEL

IBLA 84-21 Decided September 28, 1994

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting high bids for eight parcels in competitive oil and gas lease sale. W 82420, et al.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

   The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

   The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, where an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value.

APPEARANCES: Ronald C. Agel, pro se; Marla E. Mansfield, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Ronald C. Agel appeals from the September 16, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), which rejected for the

second time his high bids for eight parcels at the August 18, 1982, competitive oil and gas lease sale. Appellant bid $1 per acre for parcels 7, 8, 9, 10, and 13 (W 82420 through W 82423 and W 82426); $2 per acre for parcel 21 (W 82434); and $11 per acre for parcels 24 and 25 (W 82437 and W 82438).

On October 6, 1982, by decision, BLM had previously rejected the same high bids for the eight parcels and Agel had appealed that decision.

The October 6, 1982, BLM decision had stated that the Minerals Management Service (MMS) indicated that appellant's bids did not represent fair market value. The decision noted that five of the parcels are in a producing field and three others are adjacent to producing units. The decision then stated that $15 per acre would be the lowest acceptable bid for these parcels, based on MMS studies.

On appeal, in Ronald C. Agel, 73 IBLA 340 (1983), this Board set aside the October 6, 1982, BLM decision and remanded the case. This was because the Board was unable to determine the correctness of the BLM decision on the basis of the record as it existed at that time because MMS had not supplied BLM with a supporting analysis nor a factual base for its conclusion that the bids did not represent fair market value.

The Board noted that although it would not substitute its judgment for that of the Department's experts in determining fair market value for a parcel, sufficient facts and analysis were required by the Board to ensure that a rational basis for a determination is present. In remanding the case for readjudication the Board directed that BLM give particular attention to the bids for parcels 24 and 25 and that, should BLM again decide to reject appellant's bids, BLM would be required to set forth the reasons, including the presale evaluation for any rejection of any bid on any parcel, so that appellant would be able to address them and the Board could consider them if there were an appeal.

The September 16, 1983, BLM decision again rejected the bids, stating that the rejection is based on Average Evaluation of Tract (AEOT) procedures and enclosed technical information regarding existing leases, producing wells, dry holes, etc.

In his statement of reasons for appeal of the September 16, 1983, decision, appellant challenges the applicability of AEOT procedures where his were the only bids received for the tracts and contends that his high bids determined the fair market value of the land.

By order dated April 6, 1984, we noted that neither party's position could be sustained on the state of the record. Accordingly, we ordered BLM to provide a reasoned and factual explanation of its presale evaluation of the tracts that would be sufficiently comprehensible to insure that a rational basis for its decision exists and we ordered appellant to set forth a reasoned factual basis for his belief that his bids of $1, $2, and $11 per acre represent the actual fair market value of the tracts involved.

In the order we noted that the AEOT procedure is simply a means of checking BLM's own presale evaluation of the tracts, not an independent basis

of evaluation, Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209 (D.D.C. 1981), and that the photocopies of plat maps and memoranda with various notations, symbols, numbers, abbreviations, formulae, and calculations that were submitted as the technical information do not intelligibly set forth the basis for the presale evaluation of the tracts. We further noted that appellant's argument that his bids represent the value of the lands cannot prevail. Bidders often consider many factors in making their bids, including conserving limited resources to make bids on other parcels; thus, one bid does not necessarily indicate fair market value. Exxon Corp., U.S.A., 15 IBLA 345, 357-58 (1974); Mary M. Gonzales, 67 IBLA 351, 353 (1982). In any event, the Secretary may reject any bid he believes does not meet fair market value. 43 CFR 3120.3-1.

Although an explanation by BLM justifying its determination of minimum acceptable bid has been required, appellant is nonetheless under an affirmative obligation to establish a basis for a determination that there was error in the decision appealed from, i.e., that appellant's bids represent the fair market value. Viking Resources Corp., 80 IBLA 245, 247 (1984). 1/

In his response to our request for an explanation of the basis of the fair market value of his bids, appellant states that at the time the bids were made oil and gas prices "had dropped drastically" and interest rates were high. He adds that 38 different bidders actually participated in the competitive sale. Appellant states that he bid as much as his company could afford to risk, based on a review of oil and gas maps and the "past, unsuccessful drilling on most of these lands." He contends that in a well-publicized situation such as this, participated in by many other bidders, single bids for certain tracts do indicate their fair market value since the absence of other bids evidences low demand for those parcels.

On June 13, 1984, BLM filed an appraisal report. On June 19 and July 16, 1984, appellant filed responses to the appraisal report. 2/ Appellant contends that the evaluations were done recently, not at the time of the

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1/ On May 7, 1984, appellant responded to the Apr. 6, 1984, order. BLM did not respond and on May 17, 1984, BLM was ordered to show cause why its decision of Sept. 16, 1983, should not be reversed. On June 8, 1984, counsel for BLM requested that BLM be granted until June 15, 1984, to respond to the order of May 17.

By order dated June 12, 1984, BLM's request that it be granted until June 15, 1984, to respond to the Board's order of May 17, 1984, was granted. In the June 12, 1984, order, however, we noted that appellant had filed a letter objecting to any further extensions and requesting that the decision be reversed and the leases issued. We also noted that although BLM did not respond timely to the Board's May 17 order, and did not respond at all to the order of Apr. 6, 1984, the request for extension was granted under the circumstances only in the interest of considering all points of view in this case.

BLM's failure or delay in responding to Board orders issued to facilitate the administrative review process runs the risk of reversal of the decision under review. Steven Lutz, 39 IBLA 386 (1979).

2/ BLM did not provide its counsel with a copy of the appraisal report. Appellant did not serve copies of his responses to the appraisal report on

rejection when conditions were different, and questions the statement that many nearby wells were plugged due to mechanical failures rather than lack of production. Appellant further questions the comparability of adjacent parcels and repeats his view that bids on the parcels involved are the basis for determining the value of those parcels.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent the fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). Departmental policy in the administration of the competitive leasing program is to seek the return of fair market value for the grant of leases. The Secretary reserves the right to reject a bid which will not provide such a return. Coquina Oil Corp., 29 IBLA 310, 311 (1977).

The Secretary is entitled to rely on the reasoned analysis of technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a sufficient explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Southern Union Exploration Co., supra; Charles E. Hinkle, 40 IBLA 250 (1979); Yates Petroleum Corp., 32 IBLA 196 (1977). Where a decision to make a bid has been made in a careful and systematic manner, that decision will not be reversed even though the determination may be subject to reasonable differences of opinion. Viking Resources Corp., supra at 247.

[2] Appellant's argument that a single bid for a tract may indicate its fair market value at a well-publicized sale is correct as a matter of economic theory for a particular sale. However, BLM does not rely on this approach to determine fair market value; rather, it bases its estimation of fair market value on analyses of other sales of comparable properties and of present values based on anticipated income. Where BLM has demonstrated a reasonable basis for rejecting bids that are less than its estimations of fair market values using these approaches, we have upheld its decisions. Aminoil USA, Inc., 81 IBLA 231 (1984); L. B. Blake, 67 IBLA 103 (1982).

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fn. 2 (continued)
counsel for BLM in accordance with 43 CFR 4.413. Accordingly, by order dated July 18, 1984, this Board provided counsel for BLM copies of the appraisal report and appellant's responses, and allowed until not later than Aug. 8, 1984, to file any additional rationale or reply deemed appropriate for the Board's full appreciation of the issues involved in this appeal. Counsel for BLM filed a response on Aug. 6, 1984.

Fair market value is the amount in cash, or in terms reasonably equivalent to cash, for which a knowledgeable owner would grant to a knowledgeable user the right to use the land where both parties are willing but not obligated to engage in the transaction. See Northwestern Colorado Broadcasting Co., 49 IBLA 23 (1980); B & M Service, Inc., 48 IBLA 233 (1980). Although the Government identifies the minimum acceptable bid in an effort to ensure that it receives fair market value for a particular parcel, a minimum acceptable bid is conceptually discrete from fair market value. Because the concept of fair market value involves terms which are mutually agreed upon by both the buyer and the seller, an unaccepted bid from a single party carries little probative weight as evidence of fair market value. The concept recognizes that a prudent seller would retain his property if no adequate offer is received.

In this case BLM's report filed June 13, 1984, appraised the value of tracts 7, 8, 9, 10, 13, and 21 on the basis of sales of comparable tracts in August 1982, the time of appellant's bids. The appraisal report analysis discusses the comparability of four tracts adjacent to tracts 7, 8, 9, 10, and 13 and concludes the lowest limit of value for the latter tracts was $13 per acre. (Appellant bid $1 per acre for these tracts.) The August 1982 sales of three tracts near tract 21 showed values ranging from $227 per acre for the nearest tract to $21 and $26 per acre for the others. The analysis treated these sales as equally comparable due to the erratic location of small pockets of reserves in the Minnelusa formation and valued them at $21 per acre. (Appellant bid $2 per acre for the tract.)

Because 1982 sales data was not available for tracts comparable to tracts 24 and 25, BLM appraised the value of these tracts by the income approach.

> The income approach is an analysis widely used in the appraisal of income producing properties. It converts anticipated benefits or income into a present value estimate. For oil and gas this process takes into consideration producing wells near the subject, producing structures of the wells and the subject, reservoir depletion rates, current recoverable hydrocarbons, drilling and maintenance costs, interest and risk rates, the current selling price of hydrocarbons, and geologic structure analysis.

(Appraisal Report at 4). The results of the analysis by this method for tract 24 was a value of $3,119.65 per acre and for tract 25 was $308.07 per acre. (Appellant bid $11 per acre for each of these parcels.)

These analyses substantiate the comparability of the other sales and the reasonableness of the values based on projected income. Appellant acknowledges his bids were based on an assessment of what he could afford. Although that is a perfectly reasonable bidding strategy, it does not either vitiate BLM's determination of fair market value for the tracts or establish a better basis for that determination. We conclude that appellant has not carried his burden of demonstrating error in the BLM decision rejecting his bids as inadequate. Viking Resources Corp., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Franklin D. Arness
Administrative Judge